

a periodic electronic newsletter from the Affirmative Civil Enforcement (ACE) unit, Civil Division, sent to its client agencies regarding significant activities handled by the ACE unit, initiatives, and information and developments on major ACE issues

August 2003

RICHARD E. BYRNE APPOINTED TO HEAD U.S. ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF ILLINOIS

Richard E. Byrne, a career prosecutor with an extensive background in litigation and administration, has been appointed by Attorney General John Ashcroft as Deputy United States Attorney (DUSA) for the Southern District of

Illinois and will serve as the chief federal law enforcement officer in Southern Illinois.

DUSA Byrne brings a wealth of experience to his new position. He recently served as Chief of Staff for the Executive Office for

United States Attorneys (EOUSA), a 400-employee component of the Department of Justice that oversees the administration of all the United States Attorney's Offices around the country. He was formerly an Assistant U.S. Attorney in Miami, Florida, where he was in charge of a unit that prosecuted major drug crimes and then later oversaw the white collar and health care fraud sections. He began his career with the Department in the Antitrust Division where he prosecuted criminal violations of the antitrust laws. His

experience at EOUSA has taught him the benefits of affirmative civil enforcement and the financial litigation units.

Please join us in welcoming Richard E. Byrne to Southern Illinois.



NEW FEDERAL MEDICAL PRIVACY RULES ENACTED

What anyone seeking medical records should know

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) has recently been amended to include new "Standards for Confidentiality of Individually Identifiable Health Information." The new standards can be found at 45 C.F.R. Parts 160 and 164. Basically, the standards govern how and when a covered entity can use or disclose individually identifiable health (medical) information (in whatever form) concerning an individual. Under the new standards the health or medical information is usually referred to as

"protected health information" (PHI).

A covered entity is any health plan, any health care clearinghouse, or any health care provider (see 45 C.F.R. § 160.103). PHI is any information obtained by a covered entity that relates to the physical or mental health or condition of an individual, the provision of health care to an individual, or how the health care was paid for that either identifies the individual or includes enough information that the individual can be reasonably identified. The rule is very broad and covers virtually any medical or mental health care record of any individual.

The general rule is that a covered entity may not use or disclose PHI unless permitted under the rules. Some permitted uses and disclosures by a covered entity include: patient authorization; health oversight; law enforcement needs; what is "otherwise required by law," statute, subpoena, or court order; and coroner and medical examiner needs. Disclosures may also be made in order to avert a serious threat to health or safety, to prevent child or domestic abuse, and to assist correctional institutions and law enforcement in custodial situations.

This office recently provided extensive training on the new medical privacy rules by showing several different videos that were produced by the Justice Television Network. If you did not have an opportunity to join us at the initial viewing of the videos, please be aware that the videos are available for viewing on VCR tape. Please contact Paul Fairbanks of this office at (618) 628-3700 to arrange a viewing of the videos.

This office also has available laminated Miranda-style cards which contain a summary of the provisions of the medical privacy rules. Contact us if you need any additional information, training, or the summary cards.



CIVIL FRAUD INJUNCTIONS

ACE unit uses civil statute to enjoin illegal activities and freeze assets

18 U.S.C. § 1345 allows the United States to bring a civil action for an injunction against any individual who is committing fraud. If the fraud involves a banking or health care violation, the injunction can also be used to freeze any money that is traceable to the fraud. This weapon can be a very powerful tool against fraud and goes right to the heart of the fraud -- the money.

In a very recent case in this office, an individual was receiving disability benefits from the Department of Veterans Affairs (VA) by feigning paralysis. A VA investigation resulted in extensive evidence of the individual walking, doing yard work, and otherwise leading a mobile life. Due to VA regulations the agency was not able to immediately terminate the benefits of the individual and the person stood to receive several months' worth of benefits to which he was not entitled. This office was able to obtain a civil injunction against the ongoing fraud and to get the VA authorized to withhold further payments to the individual.

In an earlier case, the United States became aware that a blood testing laboratory located in Harrisburg, Illinois, was performing Medicare tests on blood from deceased patients and on blood that did not came from a Medicare patient. The blood was submitted under billing codes that had been reported stolen. The United States was able to locate the Medicare payments and freeze those payments. The United States was able to recover over \$140,000.

If you think you may have a case that may benefit from the application of the Fraud Injunction Statute, please do not hesitate to contact this office.



RECENT SUCCESSES

Several settlements illustrate utility of civil pursuit of false claims submitted to the United States

In United States v. Ross Products Division of Abbott Laboratories, Inc., the government was successful in obtaining a \$400 million civil settlement against the Ross Products Division of Abbott Laboratories. The issue was how Medicare was billed for enteral feeding pumps that had been supplied to nursing homes as part of a bundled transaction when the nursing homes agreed to purchase a certain amount of the plastic delivery sets for use with the enteral feeding pumps. The case arose out of "Operation Headwaters," a 3-year investigation into the illegal practices of the manufacturers of durable medical equipment. The subsidiary of the defendant, CG Nutritionals, Inc., also pled guilty to obstruction of justice and agreed to pay a \$200 million criminal fine.

Several ACE cases have been recently resolved. <u>United States ex rel. Health Outcomes Technologies v. St. Anthony's Health Center</u> was a case that arose from allegations of "DRG" coding fraud raised by a *qui tam* relator. St. Anthony's Health Center billed Medicare and Medicaid for complex pneumonia when it had only treated simple pneumonia. The case settled with a payment by St. Anthony's of \$2 million.

Another recent success story is the case of <u>United States ex rel. Finks and Shanks v. Huda.</u> This *qui tam* case involved a number of allegations,

including the allegation that several eye surgeons conspired to submit false bills under one provider's number, that an eye surgeon billed for services not provided, and that the surgeon falsified documents. On the day of trial and after a jury had been picked, the defendants agreed to pay a total of \$525,000. All payments have been made, and the United States even managed to obtain turnover to the IRS of \$40,000 of one of the relator's shares based on IRS liens.

In a case involving Midwestern Medical Supply Company, LLC, the owners of a nursing home chain distributed unnecessary and deficient orthotic equipment to patients in their homes. They then distributed additional equipment to patients outside their homes. The company paid \$150,000 to settle the allegations.

In another ACE case, Robert McCullough, a veterinarian, who was not practicing veterinary medicine at the time of the offense, was subject to penalties for over 60 violations of the Controlled Substances Act's recordkeeping provisions. The veterinarian agreed to pay \$20,000 to settle the case. Our office memorialized the settlement in a consent decree, which the District Court entered.

In a case against John L. Myers, M.D., the Drug Enforcement Administration investigated a physician who had ordered a large amount of a controlled pain killer and failed to keep proper records of the orders. The doctor stated when interviewed that he had provided the medication exclusively to his parents but had failed to record the dispensation of the pain killer. We settled the case for a payment of \$50,000.



ADDITIONAL ACE TRAINING

ACE instruction, PSN participation, pamphlets, and presentations

The ACE unit participated in the district's annual Civil Client Agency Conference on July 24, 2003. The training was conducted jointly with the Civil Division of the United States Attorney's Office for the Central District of Illinois. The training included a component and handouts regarding civil fraud cases. Agencies included the Farm Service Agency, Postal Service, IRS, Small Business Administration, Bureau of Prisons, U.S. Trustee's Office, Department of Veterans Affairs, Rural Development, and various other offices of USDA.

Deputy United States Attorney Richard E. Byrne spoke at the conference in support of the various civil initiatives in the office, especially the Financial Litigation Unit and the ACE program.

The ACE unit and asset forfeiture unit have been involved in the district's "Project Safe Neighborhoods" (PSN) program. Under that program, Criminal Division AUSAs chair periodic meetings of "Dragun Teams" which consist of representatives of local law enforcement in each of the 38 counties in the district. Civil AUSAs have made presentations to many of those teams. During the presentations, they have provided a detailed description of the district's ACE program. They have also presented information on asset forfeiture.

The ACE unit also held a meeting with representatives of the Drug Enforcement Administration's Diversion Group from St. Louis. The civil AUSAs discussed increasing the number of referrals of drug diversion cases and having the Diversion Group work with Dragun Teams to obtain information regarding investigations and possible referrals. The Diversion Group, in turn, made a presentation on an initiative it brought to our district, "Operation Pressure Point."

The ACE AUSAs also made a presentation on April 29, 2003, to a local civil group discussing the False Claims Act. The Monroe County Bar Association sponsored the presentation at one of its periodic "People's Law School" meetings.

In 2002, the ACE unit distributed the ACE pamphlet to 68 agencies and to each member of the Dragun Teams mentioned above. The pamphlet contains a short description of the district's ACE program.

SPECIAL ANNOUNCEMENT

MFCU wins award

On September 22, 2003, Gordon Fidler, Director of the Illinois State Medicaid Fraud Control Unit (MFCU), is scheduled to be in Washington, D.C., to accept an award from the Secretary of the Department of Health and Human Services recognizing the Illinois State MFCU as the National MFCU of the Year. The award covers calendar year 2002.

This prestigious award recognizes the great work of our MFCU. Congratulations to Director Fidler and the entire MFCU for a job well done.

MFCU MONTHLY CONFERENCE

Monthly conference calls

The ACE unit, along with member of the Civil Division, hold monthly telephonic conferences with the Director of Illinois's Medicaid Fraud Control Unit and others. The conferences consist of the review of joint cases, the status of investigations and cases, and plans for those investigations and cases in the future.